IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.7.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.1256 to 1258 of 2006
and T.C.M.P.Nos.1642 and 1643 of 2006

The Commissioner of Income Tax
Trichy. .. Appellant in all the cases.

Vs.

V.T.Rajendran .. Respondent in all the cases.

Appeals under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'D' Bench dated 28.10.2005 in ITA Nos.1286, 1287 and 1288/Mds/2004, for the assessment years 1996-97, 1997-98 and 1998-99 against the order of The Commissioner of Income Tax (Appeals) Tiruchirapalli dated 12.3.2004 in ITA.No.134, 135, 136 & 229/02-03 and against the order of the Income Tax Officer Ward I(2) Nagapattinam dated 27.3.2002 GIR 3553/I(2)/Ngt.

For Appellant : Mr.T.Ravikumar

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeals are directed against the common order of the Income-tax Appellate Tribunal in ITA Nos.1286, 1287 and 1288/Mds/2004 dated 28.10.2005 for the assessment years 1996-97, 1997-98 and 1998-99 respectively.

2.1. The brief facts are that the assessee constructed a Kalayana Mandapam known as 'TRG Kalyana Mandapam'. The cost of the construction falls within the assessment years 1996-97 to 1999-2000. The total investment declared by the assessee for the above assessment years was Rs.90,17,190/-. The Assessing Officer, of course, before completing the scrutiny assessment for the said assessment years, referred the matter to the Departmental Valuation Officer. But, however, before receiving the valuation report, he completed the assessment. Thereafter, the

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Departmental Valuation Officer estimated the cost of construction at Rs.1,23,46,000/-. After allowing certain deductions from the estimate made by the valuation officer, the assessing officer reduced the cost of construction at Rs.1,08,51,700/-. Accordingly, based on the above difference in the cost of the construction of the Kalyana Mandapam, the assessing officer reopened the assessment for the said assessment years under Section 143(3) read with Section 147 of the Income-tax Act on the ground that he had reason to believe that there was escaped assessment due to the failure of the assessee to declare the investment made by him in the construction of the Kalyana Mandapam. Hence, a notice was issued under Section 148 of the Act and thereafter, the assessing officer also assessed the value to the effect that there is difference in the cost of construction as shown in the respective assessment orders, viz., for the assessment year 1996-97 at Rs.3,02,258/-, for the assessment year 1997-98 at Rs.4,23,162/- and for the assessment year 1998-99 at Rs.4,23,162/-.

2.2. Even before the scrutiny, the assessee was given a notice and required to furnish the books of accounts and vouchers maintained for the construction of the Kalyana Mandapam. Since the assessee could not produce the same, the assessing officer came to the conclusion that there is substantial difference in the cost of construction as per the Departmental Valuation Report and accordingly, held the difference as an unexplained investment and added the same under Section 69 of the Income Tax Act by respective assessment orders dated 27.3.2002.

2.3. Aggrieved by the said assessment orders, the assessee preferred appeals before the Commissioner of Income-tax (Appeals), who dismissed the appeals, by order dated 12.3.2004, aggrieved by which, the assessee again preferred appeals before the Income Tax Appellate Tribunal. The Appellate Tribunal, by a common order dated 28.10.2005, allowed the appeals and hence, the present appeals by the Revenue raising the following substantial questions of law:-

> "1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that the reopening of the assessment under 147 of the Income Tax Act on the basis of valuation report is not proper ?
>
> 2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in holding that the addition on account of cost of construction as per the report of the valuation officer is not proper in spite of the fact that there is a vast difference in cost of construction disclosed and the cost determined by the valuation officer ? "

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3. Even at the outset, we may say that we do not see any merit in either of the above questions raised in view of the settled proposition of law.

4.1. A single Judge of Rajasthan High Court, in TARA CHAND MUNDHRA v. UNION OF INDIA [(2000) 245 ITR 187], has held that once the books of account were held to be reliable, as in the instant case where the assessing officer already accepted vide in his assessment orders, the value of the construction of the Kalyana Mandapam as disclosed by the assessee, the valuation report could not be made the basis for reopening the assessment and therefore, the only ground available for the Department for reopening the assessment was the report of the official valuer for issuing notice under section 148 which is bad and without foundation and therefore, liable to be quashed.

4.2. A Division Bench of the Bombay High Court, in COMMISSIONER OF INCOME-TAX v. VINOD DANCHAND GHODAWAT [(2001) 241 ITR 448] where during the search, it was found that the assessee had constructed a bungalow and that had incurred an expense of Rs.4.16 lakhs for the same and the assessing officer, thereafter, referred the matter to the Department Valuer, who valued the property at Rs.6.66 lakhs and the difference between the said valuation was added as an undisclosed income, it was held that no addition could be made on the basis of the report of the Departmental Valuer, which was obtained subsequent to the order of regular assessment.

4.3. In CIT v. DARSHAN SING [(2005) 194 CTR (P&H) 242], the Punjab & Haryana High Court has held that reopening of assessment on the basis of the report of the Valuation Officer determining the cost of construction at a figure higher than what was disclosed by the assessee is not justified.

5. In view of the above settled proposition of law, we do not find any force in the contention of the Revenue for raising the first question of law.

6. In view of our above conclusion with regard to the first question of law, we also do not find any force in the second question of law.

7. That apart, we do not hesitate to hold that the report of the Departmental Valuation Officer cannot be a basis because the valuation cannot be an arithmetical appreciation of the materials used for the construction nor the expenses incurred by the assessee in that regard, as the variations are bound to be there, as fairly conceded by the learned counsel appearing for the Revenue that there is variation in the value of the construction between Central PWD rates and State PWD rates themselves.

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8. Hence, finding no merit in these appeals, the same are dismissed. Consequently, connected T.C.M.Ps. are also dismissed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Madras Bench "D".
Rajaji Bhavan, III floor,
Besant Nagar, Chennai-90.

2.The Secretary, Central Board
of Direct Taxes, New Delhi.

3.The Commissioner of Income-
Tax (Appeals), Tiruchirappalli.

4.The Income-tax Officer,
Ward I(2), Nagapattinam.

5.The Commissioner of Income Tax,
Trichy.

3 cc To Mr.N.Murali Kumaran, Advocate, SR.39741 to 29743.

TC (A) Nos.1256-1258 of 2006

TEJ(CO)
RVL 28.08.2006

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